APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,009	06/28/2001	Louis Morrison III	068.0002	3675

7590 10/13/2005		EXAMINER
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Washington, DC 20036		DATE MAILED: 10/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

		Application No.	Applicant(s)
	Office Action Summary	09/895,009	MORRISON ET AL.
		Examiner	Art Unit
		Dennis Ruhl	3629

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
     closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
         application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)   4)☐ Interview Summary (PTO-413)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)   Paper No(s)/Mail Date. _____.
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)   5)☐ Notice of Informal Patent Application (PTO-152)
     Paper No(s)/Mail Date _____.   6)☐ Other: _____.

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

The claims are not numbered correctly. There are two claims numbered as number 1. The examiner has renumbered the claims correctly (2nd number 1 claim is not number 2) and refers applicant to the attached copy of the claims that shows how the examiner has renumbered the claims. The office action always refers to the renumbered claim numbers and applicant is requested to ensure that any further response to this office action has the claims numbered correctly.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-8,10, are rejected under 35 U.S.C. 102(e) as being anticipated by McCall et al. (6321984).

For claims 1,2,4,10, McCall discloses a system and method for the distribution of fuel to a customer. McCall discloses that a server facility 204 is used to store fuel deal

data in database 206. The data is fuel deal data as claimed because the data in

database 206 is data indicative of special prices given to customers on gas when

certain incentive criteria have been met (i.e. certain dollar amount purchased over time,

certain volume purchased over time or other). The server facility 204 processes the

data about a particular customer (purchase history and deal they are eligible for) and

automatically generates pricing data (gas price) based on the fuel deal data. The

predetermined pricing policy technique is the particular incentive program that is in

place at any particular time or is the specific plan tailored to particular customers

(member of a club that receives an automatic discount). The client facility is the fuel

dispenser controller 26. The client facility is coupled to the server facility by an

electronic network as claimed, and McCall specifically recognizes and discloses the use

of the Internet as a network in column 9, lines 15-20. The client facility allows the user

to enter fuel deal data because for each transaction conducted at the pump, the data is

saved in the database 206. The transaction data is stored so that it can be determined

when the incentive criteria has been met by the customer and the discount can be

received. This satisfies what is claimed with respect to the entering of data via the client

facility. The intended use recitation of fuel being sold by a fuel distribution system is in

McCall. The fuel distribution system (although not positively claimed as part of the

scope of the system) is the pump nozzle and associated hardware that actually

dispenses the fuel.

For claim 3, the Internet is an "open standards based protocol" as claimed.

For claim 5, the server facility processes and generates pricing data periodically. Whenever a customer uses the system for a purchase the server facility is processing and generating pricing data as claimed.

For claim 6, McCall discusses the identification of a pump number, for example C. McCall discloses more than one fuel dispenser (more than one pump). This satisfies what is claimed because another customer at another pump satisfies what is claimed. The server facility is capable of being accessed by more than one pump controller at one time.

For claim 7, McCall discloses that the server facility and the client facility are remote from each other. See column 3, line 65 to column 4, line 4.

For claim 8, the incentive program looks to prior purchase data and this is the same as past fuel deals (how much did you buy in terms of volume or dollar amount?).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

5.   Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Axxis Petroleum and the petroleum price analysis software that they produce and sell.

For claims 1,2,3,6,7,9,10,11,12,13,16,17,19,20, Axxis petroleum is a company

that has been making petroleum price analysis software for the industry since 1991 to

late 1990's, when some more software was released in 1997. Axxis petroleum is

disclosed as "*electronically capturing almost 100,000 prices every day and subjects*

them to a strict quality assurance procedure, resulting in approximately 25,000 unique

prices including gasoline, distillates, aviation fuels, ethanol, and propane". Axxis also

provides "*the prices at all terminals within a rack city*" and is disclosed as providing a

"*comprehensive list of averages in the industry*". Axxis software provides their

customers with petroleum price analysis and the necessary data needed to make

informed decisions about the market and about the pricing of petroleum products. With

respect to the claimed server facility that stores fuel deal data and processes the data to

automatically generate pricing data in accordance with a predetermined pricing policy,

the use of a server facility is considered inherent to Axxis petroleum. This is because

for Axxis petroleum to electronically capture and process almost 100,000 prices daily,

and to then analyze the data with their pricing software, a server (reads on a computer)

is necessarily required. You cannot run price analysis software without a server facility

as claimed. Axxis uses the Internet to capture data and deliver end result data to their

customers and this also would require a server facility as claimed. The claimed

predetermined pricing technique is the manner in which Axxis goes about analyzing the

collected data. The disclosure of *"electronically capturing almost 100,000 prices every

day and subjects them to a strict quality assurance procedure, resulting in

approximately 25,000 unique prices including gasoline,..."* is a disclosure to a

predetermined pricing technique that results in pricing data (any data relating to the

price data analysis). The client facility is the individual customers and their computers

that are electronically coupled to the server facility via the Internet so that data can be

collected, analyzed, and disseminated to their customers. This is also considered

inherent because if you are receiving electronic data via the Internet, there must be a

client facility of some kind that is sending the data to the server facility.

Not disclosed by Axxis is that the predetermined pricing technique results in fuel

prices based on weighted averages for fuel prices. Axxis provides *"the prices at all

terminals within a rack city"* and is disclosed as providing a *"comprehensive list of

averages in the industry"*. The *"list of averages"* is discussed with respect to prices.

Axxis takes in past fuel deal data and generates averages for these prices. It would

have been obvious to one of ordinary skill in the art at the time the invention was made

to provide Axxis and the petroleum price analysis software with the feature of providing

"a weighted average" of fuel prices as part of the data that the system generates. In

view of the fact that it is disclosed that averages are generated for fuel prices, and in

view of the fact that "weighted averages" are common in the analysis of prices, one of

ordinary skill in the art at the time the invention was made would have found it obvious

to produce a weighted average for fuel prices as part of the results of the price analysis

software. A weighted average is a useful piece of data one of ordinary skill in the art

would want to know about when analyzing petroleum prices. From the teaching of

producing averages for fuel prices, producing "weighted averages" would have been

obvious to one of ordinary skill in the art.

For claims 4,14, a "data storage facility" is inherent to Axxis. A database is

necessarily required to be able to process and store all of the data that Axxis collects

and processes.

For claims 5,15, on a daily basis (is periodically) Axxis processes and generates

pricing data as claimed.

For claims 8,18, the data that is collected by Axxis is data about "past fuel deals"

as claimed. The pricing software uses past fuel deal data in the analysis of petroleum

prices.

6.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Finley (6442448), Comer et al. (5596501), Royal, Jr. et al. (6360137),

Wilson (6813609), Nicholson (6732081), Covington et al. (6725106), Navani et al.

(20020049667), and McArthur et al. (20040110044) disclose and are related to fuel

systems and concern fuel price determinations.

The following non-patent documents are relevant to the disclosed and claimed invention. *"Saudi Aramco to Alter Crude Pricing"*; *"Oil pricing reforms must be pursued with caution"*; *"The pricing of natural gas in US markets"*; and *"Democrats seek milk-price changes; "Weighted averages': Delegation makes request to Glickman"* discuss fuel pricing and show that weighted averages are well known when it comes to price analysis.

7.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 571-272-6808. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
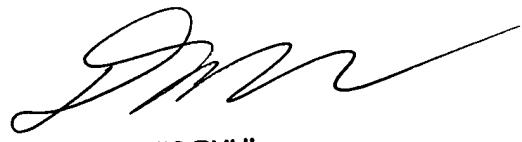
DENNIS RUHL
PRIMARY EXAMINER

CLAIMS

What is claimed is:

1 1.   A system for facilitating sale and distribution of fuel to a fuel

2 customer, comprising:

3   a server facility configured to store fuel deal data, and to

4 process said fuel deal data to automatically generate pricing data

5 based on said fuel deal data and in accordance with a pre-

6 determined pricing technique; and

7   a client facility coupled to said server facility via an

8 electronic data network and configured to permit a user to enter

9 said fuel deal data and to cause said server facility to store and

10 process said fuel deal data to generate said pricing data,

11   whereby fuel is sold and distributed to a fuel customer via a

12 fuel distribution system based on said fuel deal data and said

13 automatically generated pricing data.

2 2.   The system according to claim 1, wherein said server facility

2   and said client facility are coupled to each other via the

3   Internet.

3 3.   The system according to claim 1, wherein said server facility

2   and said client facility are coupled to each other via open

3   standards based protocols.

4 4.   The system according to claim 1, wherein said server facility

2   includes a data storage facility storing said fuel deal data.

5 5.   The system according to claim 1, wherein said server facility

2   automatically generated said pricing data periodically.

6 6.   The system according to claim 1, wherein said server facility is

2   further configured to be accessed by a plurality of other client

3   facilities simultaneously.

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6. The system according to claim 1, wherein said client facility is remotely located away from said server facility and said client facility acts as a data collection point for collecting data that said server facility uses in automatically generating said pricing data.

7. The system according to claim 1, wherein said predetermined pricing technique involves basing prices for fuel deals based on past fuel deals.

8. The system according to claim 1, wherein said predetermined pricing technique involves said server facility generating a weighted average selling price based on prior fuel deals.

9. The system according to claim 1, wherein said predetermined pricing technique is implemented within said server facility as a software module running within said server facility.

10. A system for facilitating sale and distribution of fuel to a fuel customer, comprising:

a server facility configured to store fuel deal data, and to process said fuel deal data to automatically generate pricing data based on said fuel deal data and in accordance with a pre-determined pricing technique, said pre-determined pricing technique controlling said server facility to compute fuel prices based on weighted averages of fuel prices maintained within said fuel deal data; and

a client facility outfitted with a client application and coupled to said server facility via an electronic data network and configured to permit a user to enter said fuel deal data and to cause said server facility to store and process said fuel deal data to generate said pricing data, said client application configured to

15   access said electronic data network and to establish

16   communications with said server facility,

17   whereby fuel is sold and distributed to a fuel customer via a

18   fuel distribution system based on said fuel deal data and said

19   automatically generated pricing data.

1   11. The system according to claim 10, wherein said server facility

2   and said client facility are coupled to each other via the

3   Internet.

1   12. The system according to claim 10, wherein said server facility

2   and said client facility are coupled to each other via open

3   standards based protocols.

1   13. The system according to claim 10, wherein said server facility

2   includes a data storage facility storing said fuel deal data.

1   14. The system according to claim 10, wherein said server facility

2   automatically generates said pricing data periodically.

1   15. The system according to claim 10, wherein said server facility

2   is further configured to be accessed by a plurality of other

3   client facilities simultaneously.

1   16. The system according to claim 10, wherein said client facility

2   is remotely located away from said server facility and said

3   client facility acts as a data collection point for collecting data

4   that said server facility uses in automatically generating said

5   pricing data.

1   17. The system according to claim 10, wherein said

2   predetermined pricing technique involves basing prices for fuel

3   deals based on past fuel deals.

1   18. The system according to claim 10, wherein said

2   predetermined pricing technique involves said server facility

3   generating a weighted average selling price based on prior fuel

4   deals.

1   19. The system according to claim 10, wherein said

2   predetermined pricing technique is implemented within said

3   server facility as a software module running within said server

4   facility.

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